

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARLAND COLEMAN,	§
	§ No. 613, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0506001644
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 9, 2010

Decided: March 8, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 8th day of March 2010, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26(c), his attorney’s motion to withdraw, and the State’s response thereto, it appears to the Court that:

(1) On October 9, 2009, the defendant-appellant, Garland Coleman, was found by a Superior Court judge to have committed a violation of probation (“VOP”) in connection with his previously-imposed sentences for Escape After Conviction, Felony Theft and Receiving Stolen Property. He was re-sentenced to a total of 19 months incarceration at Level V, to be followed by discharge as unimproved on the escape conviction. He was

discharged as unimproved on the remaining two convictions. This is Coleman's direct appeal from his VOP sentence.

(2) Coleman's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(3) Coleman's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Coleman's counsel informed Coleman of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Coleman also was informed of his right to supplement his attorney's presentation. Coleman responded with a brief that raises one issue for this Court's consideration. The State has responded to the position taken by

¹ *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

Coleman's counsel as well as the issues raised by Coleman and has moved to affirm the Superior Court's judgment.

(4) Coleman raises one issue for this Court's consideration. He claims that the judge who presided over the VOP hearing exhibited a closed mind during sentencing and did not give proper weight to the mitigating circumstances presented. Coleman does not dispute that he should have been sentenced, but argues that he should have received a shorter sentence than the one imposed by the Superior Court.

(5) Appellate review of a sentence generally ends upon a determination that the sentence is within the statutory limits prescribed by the Legislature.² In reviewing a sentence within the statutory limits, this Court will not find error or abuse of discretion unless it is clear from the record below that the sentence has been imposed on the basis of demonstrably false information or information lacking a minimum indicium of reliability, or unless it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.³ If a VOP is established, the sentencing judge may order the violator to serve the sentence imposed

² *Mayes v. State*, 604 A.2d 839, 842-43 (1992).

³ *Id.*

for the original sentence, less any Level V time served, or any lesser sentence.⁴

(6) The transcript of the VOP hearing reflects the following. Coleman's probation officer testified that this was the third time Coleman had escaped from custody. He also testified that the last time Coleman absconded he was gone for two months and missed a trial date. Coleman admitted that he had absconded from house arrest, but argued that his poor relationship with his girlfriend prevented him from remaining at his residence. Coleman does not dispute that his sentence is within the statutory limits, but, rather, asserts that the judge should have exercised his discretion to impose a shorter sentence.

(7) We have carefully reviewed the transcript of the VOP hearing and find no abuse of discretion on the part of the Superior Court in sentencing Coleman as it did. Once Coleman had admitted to the VOP, the Superior Court had discretion to sentence him to the full amount of time left on his sentences. The record reflects that the Superior Court sentenced Coleman to significantly less time than it could have. Moreover, there is no evidence that the Superior Court sentenced Coleman with a closed mind.

⁴ Del. Code Ann. tit. 11, §4334(c).

(8) This Court has reviewed the record carefully and has concluded that Coleman's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Coleman's counsel has made a conscientious effort to examine the record and the law and has properly determined that Coleman could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice